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In re the Matter of:) Case No.: 07-273
)
State of New Hampshire Banking) Order to Show Cause
)
Department,)
)
Petitioner,)
)
and)
)
CBSK Financial Group Inc, Brent)
)
McElwee, Cyndi McElwee, Lori Pendray,)
)
Dorita Kay, and William K. Halapin,

Respondents

12

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A:17, RSA 541-A, BAN 200 and JUS 800.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:21, the Commissioner has the authority to suspend, revoke or deny any license and to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire banking law and rules.

NOTICE OF RIGHT TO REQUEST A HEARING

23 The above named respondents have the right to request a hearing on this
24 Order to Show Cause, as well as the right to be represented by counsel at
25 each Respondent's own expense. All hearings shall comply with RSA 541-A. Any
such request for a hearing shall be in writing, and signed by the respondents

1 or the duly authorized agent of the above named respondents, and shall be
2 delivered either by hand or certified mail, return receipt requested, to the
3 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
4 03301. Such hearings will be scheduled within 10 days of the request. If the
5 Respondents fail to appear at the hearing after being duly notified, such
6 person shall be deemed in default, and the proceeding may be determined against
7 the Respondent upon consideration of the Order to Show Cause, the allegations
8 of which may be deemed to be true.

9 If the Respondents fail to request a hearing within 30 calendar days of
10 receipt of such order or reach formal settlement with the Department within
11 that time frame, then such person shall likewise be deemed in default, and the
12 orders shall, on the thirty-first day, become permanent, and shall remain in
13 full force and effect until and unless later modified or vacated by the
14 commissioner, for good cause shown.

15 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

16 The Staff Petition dated February 15, 2008 (a copy of which is attached
17 hereto) is incorporated by reference hereto.

18 **ORDER**

19 WHEREAS, finding it necessary and appropriate and in the public
20 interest, and consistent with the intent and purposes of the New Hampshire
21 banking laws, and

22 WHEREAS, finding that the allegations contained in the Staff Petition,
23 if proved true and correct, form the legal basis of the relief requested,

24 It is hereby ORDERED, that the Respondent shall show cause why:

- 25 1. Administrative penalties of \$2,500.00 should not be imposed
against each named Respondent; and
2. Statutory penalties of \$10,900.00 should not be imposed; and
3. Respondent CBSK's license should not be revoked; and

1 It is hereby ORDERED that:

2 4. Failure to request a hearing within 30 days of the date of
3 receipt of this Order shall result in a default judgment being
4 rendered, license revocation and administrative penalties
5 imposed upon the defaulting Respondent.

6 SIGNED,

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8 Dated: 3/10/08

9 /SRAF/
10 PETER C. HILDRETH
11 BANK COMMISSIONER
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In re the Matter of:) Case No.: 07-273
)
State of New Hampshire Banking) Staff Petition
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Department,)
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Petitioner,) February 15, 2008
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and)
)
CBSK Financial Group Inc, Brent)
)
McElwee, Cyndi McElwee, Lori Pendray,)
)
Dorita Kay, and William K. Halapin,

Respondents

The Staff of the Banking Department, State of New Hampshire (hereinafter referred to as the "Department) alleges the following facts:

1. On or about April 30, 2007, the Department began an examination of CBSK Financial Group Inc (hereinafter "Respondent CBSK").
2. Brent McElwee (hereinafter "Respondent B. McElwee") is President and 50% shareholder of Respondent CBSK.
3. Cyndi McElwee (hereinafter "Respondent C. McElwee") is Secretary-Director and 50% shareholder of Respondent CBSK.
4. Lori Pendray (hereinafter "Respondent Pendray") is Chief Financial Officer/Treasurer of Respondent CBSK.
5. Dorita Kay (hereinafter "Respondent Kay") is Vice President of Respondent CBSK.
6. William K. Halapin (hereinafter "Respondent Halapin") is Vice President of Respondent CBSK.

7. Respondent CBSK was licensed as a Mortgage Banker and at all times relevant to this action held a Department license since at least 2005.

8. The Department sent a notice of the second phase of the examination to Respondent CBSK via US Certified Mail on June 15, 2007 (mail piece number 7002 2410 0005 1958 9298). The Respondent received and signed for the notice on or about June 21, 2007.

9. Respondent CBSK faxed the Department on July 25, 2007 requesting until August 8, 2007 to provide the loan files to the Department.

10. To date Respondents have failed to facilitate the examination.

11. July 12, 2007 was the end of the 21-day grace period.

12. It has been 218 days since July 12th without any further production of documents.

ISSUES OF LAW

The staff of the Department, alleges the following issues of law:

1. The Department realleges the above stated facts in paragraphs 1 through 12.

2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage broker activities pursuant to NH RSA 397-A:3.

3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the Department may examine the business affairs of any licensee or any other person, whether licensed or not, as it deems necessary to determine compliance with this Chapter and the rules adopted

1 pursuant to it and with the Consumer Credit Protection Act, as
2 amended (15 U.S.C. 1601 et seq.). In determining compliance,
3 the Department may examine the books, accounts, records, files,
4 and other documents or matters of any licensee or person. RSA
5 397-A:12 further requires every person being examined, and all
6 of the officers, directors, employees, agents, and
7 representatives of such person shall make freely available to
8 the commissioner or his examiners, the accounts, records,
9 documents, files, information, assets, and matters in their
10 possession or control relating to the subject of the examination
11 and shall facilitate the examination. The Respondent violated
12 this provision by failing to facilitate the examination.

13 4. RSA 397-A:11 provides for a fine of \$50 per day for every day
14 that records are not produced after 21 days.

15 5. RSA 397-A:12 provides that the expense of such examination shall
16 be chargeable to and paid by the licensee.

17 6. RSA 383:11 I provides that no institution shall be charged or
18 pay less than one full day for the cost of the examination.

19 7. RSA 383:11 III provides that payments of the charges for the
20 cost of the examination be made within 60 days of receipt of the
21 notice.

22 8. RSA 397-A:21 IV provides that any person who, either knowingly
23 or negligently, violates any provision of Chapter 397-A, may
24 upon hearing, and in addition to any other penalty provided for
25 by law, be subject to an administrative fine not to exceed
\$2,500, or both. Each of the acts specified shall constitute a

1 separate violation, and such administrative action or fine may
2 be imposed in addition to any criminal penalties or civil
3 liabilities imposed by New Hampshire Banking laws.

4 9. RSA 397-A:21 V provides that every person who directly or
5 indirectly controls a person liable under this section, every
6 partner, principal executive officer or director of such person,
7 every person occupying a similar status or performing a similar
8 function, every employee of such person who materially aids in
9 the act constituting the violation, and every licensee or person
10 acting as a common law agent who materially aids in the acts
11 constituting the violation, either knowingly or negligently, may,
12 upon notice and opportunity for hearing, and in addition to any
13 other penalty provided for by law, be subject to suspension,
14 revocation, or denial of any registration or license, including
15 the forfeiture of any application fee, or the imposition of an
16 administrative fine not to exceed \$2,500, or both. Each of the
17 acts specified shall constitute a separate violation, and such
18 administrative action or fine may be imposed in addition to any
19 criminal or civil penalties imposed.

20 **RELIEF REQUESTED**

21 The staff of the Department requests the Commissioner take the following
22 Action:

- 23 1. Find as fact the allegations contained in section I of this petition;
24 2. Make conclusions of law relative to the allegations contained in
25 section II of the this petition;
3. Order the Respondents to Show Cause why its license should not be

revoked;

4. Assess fines and administrative penalties in accordance with RSA 397-

A:21, for violations of Chapter 397-A, in the number and amount equal

to the violations set forth in section II of this petition; and

5. Take such other administrative and legal actions as necessary for

enforcement of the New Hampshire Banking Laws, the protection of New

Hampshire citizens, and to provide other equitable relief.

RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to

request that the Commissioner take additional administrative action.

Nothing herein shall preclude the Department from bringing additional

enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

/s/
James Shepard
Staff Attorney

2/15/08
Date